IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.2598/1997
Gopal Sharma Vs Board of Revenue & Ors.

Date of Order :: 27 July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri R. D. Tripathi, for petitioner.
Shri S.R. Joshi with
Shri Ganesh Joshi)
Shri A.N. Sharma) for the respondents.

The petitioner in this writ petition has challenged the judgment dated 27.01.1997 passed by the Board of Revenue, whereby the appeal of the respondent No. 3 filed against judgment dated 08.01.1996 passed by Revenue Appellate Authority, Jaipur was set aside. The revenue appellate authority in that order had allowed the application of the petitioner under Order 6 Rule 17 CPC. In that appeal, the petitioner prayed for an amendment in the plaint of revenue suit, which was

rejected by the learned S.D.O., Jaipur vide his order dated 31.03.1993 as being not maintainable. The suit was rejected on the ground that apart from injunction and seeking entry of his name as 'Khatedar' on the strength of will of deceased Moolchand, the petitioner-plaintiff had also prayed for setting aside the sale deed dated 20.03.1989, which lies within the domain of only civil court.

I have heard Shri R. D. Tripathi, learned counsel for the petitioner and Shri S.R. Joshi, learned counsel for the respondent.

Shri R.D. Tripathi, learned counsel for the petitioner argued that Board of Revenue erred in law in interfering with the order of Revenue Appellate Authority. The Board of Revenue

was not correct in holding that the amendment allowed by the Revenue Appellate Authority at the stage of appeal, would change the nature of the suit. It was argued that even if the prayer for declaring the sale deed as null & void is deleted, the suit can still survive on other prayers. The Revenue Appellate Authority did not commit any error in passing such order because the learned S.D.O. did not decide the suit on merits but had dismissed the same as being not maintainable and on account of the aforesaid fact by which the declaration to the effect that sale deed was null and void was sought. It was, therefore, prayed that judgment passed by the Board of Revenue be set aside.

On the other hand, Shri S.R.

Joshi, learned counsel for the respondent opposed the writ petition and argued that the judgment passed by the Board of Revenue is perfectly valid and justified. The Board of Revenue has rightly held that amendment of revenue suit by deleting the prayer for declaring the sale deed as null and void would change the very nature of the suit. The Revenue Appellate Authority committed a serious illegality in accepting the application under Order 6 Rule 17 CPC at the stage of appeal. He argued that land in dispute has already been acquired. There is no right now left with the petitioner, therefore, the suit cannot be allowed to proceed on other two prayers. It was further argued that the will, on the basis of which the petitioner was claiming right was forged. In the

past, similar suit filed by the petitioner was dismissed and, therefore, second suit was barred by principles of res-judicata. In fact, after death of Manbhar, widow of late Shri Moolchand, and the other three brothers were legal heirs, who executed the agreement to sale of disputed land to respondent No.3. It was, therefore, prayed that the writ petition be dismissed.

Learned counsel for the petitioner has rejoined and argued that the Revenue Appellate Authority has committed a serious error in allowing the application under Order 6 Rule 17 CPC, while at the same time not deciding the appeal. This amounted to an error in the exercise of jurisdiction by the authority. Learned counsel for the respondent relied on the judgment given in Munilal Vs Oriental Fire

and General Insurance Company Ltd., (1996) 1 SCC 90 and Anand Babu Vs Seema Devi, RLR 1988 (1) 993. Shri R.D. Tripathi, learned counsel for the petitioner also submitted that even if the land is acquired, though the petitioner is contesting for compensation and this argument was made by him even before the Board of Revenue.

I have given my thoughtful consideration to the rival arguments advanced by the learned counsel for the parties.

The perusal of the plaint, copy of which has been annexed as Annexure-1, clearly indicates that there were basically three prayers made by the plaintiff. While the prayer No.1 was that sale deed dated 20.03.1989 be declared

null & void, prayer No. 2 was for perpetual injunction in favour of plaintiff and against the defendants for restraining them from interfering in the peaceful possession of the plaintiff. Prayer No.3 was for seeking direction upon the defendants to recall the name of the plaintiff as 'Khatedar' on the strength of Will executed by late Shri Moolchand dated 09.12.1989 in favour of plaintiff. The learned S.D.O. in his judgment dated 31.03.1993 did not decide the matter on merits, but dismissed the revenue suit as being not maintainable on the ground that the jurisdiction to declare sale deed as null & void was available with the civil court only. It was in that background of the matter that the Revenue Appellate Authority entertained and allowed the

application of the plaintiff-petitioner deleting thereby the first prayer and consequently amendments in the main body of the plaint so as to confine suit to remaining two prayers. If the first prayer is omitted, the revenue suit as it is, could not be said to be not maintainable and can survive on the remaining two prayers. The learned Board of Revenue in my considered view was not justified in interfering with the judgment/order of the Revenue Appellate Authority by which it had allowed the amendment application on payment of cost of Rs. 500/-. The revenue suit, which was dismissed in entirety and which could otherwise survive on remaining two prayers, would not get restored and tried in accordance with law. If the petitioner-plaintiff on his risk seeks to

delete the first prayer, he cannot be non-suited only on the ground that he prayed for the amendment at the appellate stage. The S.D.O. rejected the suit as being not maintainable and did not decide the case on merits, which would mean that the other issues relating to remaining two prayers were also not gone into. Amendment of the plaint, therefore, do not cause any prejudice to the defendants-respondents. As far as arguments raised on behalf of the respondent that the Will was forged and brothers of deceased Moolchand had a better claim for the land in dispute, all these issues can be decided by the revenue court on the basis of evidence led before it. The judgment in the case of Munilal of the Hon'ble Supreme Court, cited by the learned counsel for the respondent, of

course is the case, where the amendment in the pleadings of the plaintiff was allowed by the appellate court by recourse to Order 6 Rule 17 CPC while such relief had become time barred, which is not the case here. That judgment is distinguishable on the facts. Similarly another cited judgment of this Court in Anand Babu Vs Seema Devi was a case in which the amendment in a suit of injunction was prayed for so as to also add the relief about Specific Performance of Contract. This court refused to interfere in the order of trial court rejecting such application because this could amount to amendment in the nature of the suit. The present one, however, confers because where no new prayer sought to be added but out of three prayers, one of the prayer is

being deleted.

So far as further argument that Revenue Appellate Authority while allowing the application under order 6 rule 17 CPC could not have kept the appeal in which such order was passed, pending is concerned, I find strength in that argument that there was no purpose in keeping the appeal pending in the suit. The amendment in the plaint has been allowed because the revenue suit was not decided by the learned S.D.O. on merits. In fact, no discretion, much less the finding, was given on any of remaining prayers. In such circumstances, the learned Revenue Appellate Authority could not have taken upon himself to decide the suit by keeping the appeal pending. Logical consequence of amendment being

allowed would be to remand the matter for trial as per law with opportunity to all the contesting parties to led evidence and then decide the matter on merits.

In the result, this writ petition is partly allowed while judgment of Board of Revenue dated 27.01.1997 in appeal No. 11/93 in which the order dated 08.01.1996 was passed by the Revenue Appellate Authority, Jaipur is also ordered to be treated as disposed of in terms indicated therein and matter shall stand remitted to learned S.D.O. Jaipur by reviving the revenue suit No.75/92 to decide it on merits afresh.

(Mohammad Rafiq),J.

DJ/-